

# **MDL EXHIBIT 9**

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 IN AND FOR THE COUNTY OF MARICOPA

|  |   |                                     |
|--|---|-------------------------------------|
| ROBERT J. SWANSTON, individually and on              | ) | CV2002-004988                       |
| behalf of himself and all others similarly situated, | ) |                                     |
|  | ) |                                     |
| Plaintiff,   | ) |                                     |
|  | ) |                                     |
| vs.  | ) | <b>ORDER DISMISSING CERTAIN</b>     |
|  | ) | <b>CLAIMS AND DEFENDANTS</b>        |
| TAP PHARMACEUTICAL PRODUCTS, INC.;                   | ) | <b>WITHOUT PREJUDICE</b>            |
| et al.,  | ) |                                     |
|  | ) |                                     |
| Defendants.  | ) | (Assigned to the Honorable Janet E. |
|  | ) | Barton)                             |

**THIS MATTER** having been opened to the Court by The Haviland Law Firm, LLC and Jennings, Haug & Cunningham, Counsel for Plaintiff and the Class, on Plaintiff's Motion to Dismiss Without Prejudice Conflicting Class Claims as to Defendants overlapping those asserted in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, CA No. 01-12257-PBS, MDL No. 1456 (D. Mass.) ("MDL 1456");

On this \_\_\_\_ day of December, 2007,

It is hereby **ORDERED** that Plaintiff's Motion to Dismiss Without Prejudice Conflicting Class Claims is **GRANTED**;

1       **IT IS FURTHER ORDERED** that the pending class claims against the following  
 2 defendants are dismissed without prejudice pursuant to Rule 41 of Arizona Rules of Civil  
 3 Procedure to the extent the claims asserted in this action involve the same drugs as are at  
 4 issue in MDL 1456: Abbott Laboratories; Amgen Inc.; Zeneca, Inc.; AstraZeneca  
 5 Pharmaceuticals L.P.; Aventis Pharmaceuticals Inc.; Hoechst Marion Roussel, Inc.; ZLB  
 6 Behring, L.L.C. (f/k/a Aventis Behring L.L.C.); Baxter International Inc.; Baxter Healthcare  
 7 Corporation; Bayer Corporation; Bristol-Myers Squibb Co.; Oncology Therapeutics Network  
 8 Corp.; Apothecon, Inc.; Dey, Inc.; Fujisawa Healthcare, Inc.; Fujisawa USA, Inc.; Immunex  
 9 Corporation; Johnson & Johnson; Centocor, Inc.; Ortho Biotech Products, L.P.; Pharmacia  
 10 Corporation; Pharmacia & Upjohn LLC, f/k/a Pharmacia & Upjohn, Inc.; Monsanto  
 11 Company; Schering-Plough Corporation; Warrick Pharmaceuticals Corporation; Sicom, Inc.;  
 12 Gensia, Inc., and Gensia Sicom Pharmaceuticals, Inc.;

13       **IT IS FURTHER ORDERED** that within fourteen (14) days of the entry of this  
 14 Order, Plaintiff shall submit to the Court a listing of the drugs of the above-listed Defendants  
 15 that are at issue in MDL 1456, the claims for which drugs Plaintiff has agreed to dismiss  
 16 without prejudice from this case. Such list shall be appended to this Order to make clear on  
 17 the record the extent to which Plaintiff's claims have been dismissed without prejudice;

18       **IT IS FURTHER ORDERED** that the Plaintiffs' claims against the following  
 19 Defendants (who are not Defendants in MDL 1456) are dismissed in their entirety, without  
 20 prejudice: Ethicon Endo-Surgery, Indigo Medical Inc., Christopher Coleman, Michael T.  
 21 Gendelman, Eddy James Hack, Scott Hidalgo, and David Jett.; and

22       **IT IS FURTHER ORDERED** that, by this dismissal, (1) defendants do not waive or  
 23 release any defenses or arguments, including but not limited to, any statute of limitations  
 24 and/or repose defenses, which could have been asserted prior to the effective date of the  
 25 Order granting dismissal, (2) any and all applicable statutes of limitations and/or repose are,  
 26 from the effective date of the Order granting dismissal and for the pendency of MDL 1456,

1 tolled, and (3) the reinstatement of any Defendant to this action will not trigger a right of  
2 removal to federal court.

3  
4 The Honorable Janet E. Barton  
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**CERTIFICATE OF MAILING**

I hereby certify that, the foregoing ORDER DISMISSING CERTAIN CLAIMS AND DEFENDANTS WITHOUT PREJUDICE was duly lodged and served this date, December 10<sup>th</sup> 2007, on all parties, via Lexis/Nexis.

s/K. Cecil  
3778-0